

If no tangible personal property is transferred to customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability would be incurred on the sales to those customers. See 86 Ill. Adm. Code 130.301. (This is a GIL).

October 15, 2004

Dear Xxxx:

This letter is in response to your letter dated April 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a CPA firm and represent many Internet start-up companies located in the STATE. Many of our high-tech clients are selling Internet related products and services from their own web site. Although our clients are small, they are competing with some of the largest corporations and financial institutions in the country. A number of our clients provide and sell web-based software products and services. These software products and services include but not limited to payroll, property and sales tax return processing.

Online Software Web-base software:

The software used by the customer resides on the seller's servers in STATE and works interactively without downloading any software or data to the customers or end users computer. The software program processes and calculates the customer's raw data and computes the customer's unique result. The data or final computation of the tax return is permanently stored on the seller's server in STATE. The customer always has access to their data or tax return by logging on to the seller's secured password protected Web site. Although the data is permanently stored on the seller's STATE server, the customer does have the ability to print a hard copy or electronically save a back-up of their data or final tax return on their own computer by utilizing a third-party software product. Also, the seller has the ability to electronically deliver or file the final tax return to a third-party or governmental agency.

Fees:

The seller charges their customers for the access and use of the specific web based software program. There is no charge made if the customer electronically saves or prints a back-up copy of their data or tax return. However, there is an additional charge to the customer if the customer chooses to electronically transfer their data or final tax return to a third-party.

Taxability of web-based software usage

Given that the seller has nexus with your state and that the seller's customers are located in your state, are the charges for accessing and using software located on an out of state server subject to sales or use tax in your state? Does the customer's ability to electronically save or print a back-up copy of their tax return change your answer? Are the fees associated with electronic delivery of the tax return to a third-party subject to sales or use tax?

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

The transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be taxable.

If your client only charges for the search and downloading of information, and does not charge for the telecommunications transmission, then those transactions are not subject to Telecommunications Excise Tax and Simplified Municipal Telecommunications Tax liability. See 35 ILCS 630/1 et seq. and 35 ILCS 636/5-1 et seq. Should your client charge its customers for transmission and telephone line charges, then the above-mentioned telecommunications taxes would apply. Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. If such charges are not separately stated in this manner, then all charges are taxable.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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